IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF NEW MEXICO

GEORGIA FILM FUND SEVENTEEN PRODUCTIONS, LLC,

Plaintiff,

v. No. 1:14-cv-00032, KBM-RHS

JUAN SANCHEZ, individually and as President of the CHILILI LAND GRANT/LA MERCED DE CHILILI, the LA MERCED DE PUEBLO DE CHILILI BOARD OF TRUSTEES, and PATRICK ELWELL,

Defendants.

MOTION TO DISMISS

Come Now the Defendant Juan Sanchez, individually, and as President of the Chilili Land Grant/La Merced de Chilili, the La Merced de Pueblo de Chilili Board of Trustees, and move the court to dismiss the complaint against them on grounds that service of process has not taken place within the time required by Rule 4(m) of the Rules of Civil Procedure and because the amount in controversy does not exceed \$75,000.00 as required by 28 U.S.C. § 1332(a).

I. Service of process did not take place within the time required by Rule 4(m) of the Rules of Civil Procedure

Defendants show the court that service of process has not taken place within the time permitted by Rule 4(m) of the Rules of Civil Procedure. The complaint was filed by Plaintiff on January 10, 2014. Service of Process against these Defendants did not take place until October 14, 2014, more than 270 days after the filing of the complaint.

Rule 4(m) provides in part that "[i] f a Defendant is not served within 120 days after the complaint is filed, the court - on motion or on its own after notice to the Plaintiff - must dismiss

the action without prejudice against that Defendant or order that service be made within a specified time."

In applying this rule, the court is to use a two-step analysis. See Espinoza v. United States, 52 F.3d 838, 841 (10th Cir. 1995). First, a court must preliminarily examine whether the plaintiff can demonstrate good cause for failing to timely effect service by "follow[ing] the cases in this circuit that have guided that inquiry." Espinoza v. United States, 52 F.3d at 841. If the plaintiff shows good cause, the Court must grant an extension of time in which to properly serve the defendant. See Espinoza v. United States, 52 F.3d at 841. If the plaintiff fails to show good cause, however, the court may exercise its discretion to either dismiss the case without prejudice or to extend the time for service. See Espinoza v. United States, 52 F.3d at 841. The good cause provision of Rule 4(m) should be read narrowly to protect only those plaintiffs who have been meticulous in their efforts to comply with the Rule. See Despain v. Salt Lake Area Metro Gang Unit, 13 F.3d 1436, 1438 (10th Cir. 1994) and Jones v. Frank, 973 F.2d 872, 873-74 (10th Cir. 1992). Inadvertence or negligence alone does not constitute good cause for failure of timely service. Mistake of counsel or ignorance of the rules also usually do not suffice. Broitman v. <u>Kirkland (In re Kirkland)</u>, 86 F.3d 172, 176 (10th Cir. 1996). If the plaintiff fails to show good cause, the district court must still consider whether a permissive extension of time may be warranted. Espinoza v. United States, 52 F.3d 838, 841 (10th Cir. 1995). A court may consider several factors in determining whether to grant a permissive extension, including whether the applicable statute of limitations would bar the re-filed action, whether the plaintiff is proceeding pro se, and whether the defendants are evading service. See Espinoza v. United States, 52 F.3d at 842. In this case, plaintiff is not able to show that a permissive extension of time is warranted.

Defendants are not evading service, Plaintiff is not proceeding pro se, and the applicable statute of limitations does not bar a re-filed action.

II. The amount in controversy does not exceed \$75,000.00

A federal district court has original jurisdiction over a case involving a federal question or diversity of citizenship. *See Caterpillar, Inc. v. Williams*, 482 U.S. 386, 392 (1987). A federal court has diversity jurisdiction if there is complete diversity of citizenship between plaintiffs and defendants, and the amount in controversy exceeds \$75,000.00. See 28 U.S.C. § 1332(a).

The measure of damages for injury to real property is the value of the property immediately before the occurrence and immediately after the occurrence. UJI 13-1819 NMRA. The value of the land claimed by Elwell is in the range of \$15,000.00 to \$35,000.00. See the Affidavit of Juan Sanchez, attached hereto.

WHEREFORE, it is respectfully requested that the complaint be dismissed.

GARCIA LAW OFFICE

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NARCISO GARCIA, JR., LLC Attorney for Chilili Defendants 2033 San Mateo Blvd., N.E.

Albuquerque, NM 87110

(505) 265-5010

I HEREBY CERTIFY that a copy of the foregoing pleading was electronically filed, which caused the document to be electronically transmitted to defense counsel on this 4th day November, 2014.

NARCISO GARCIA, JR., LLC

AFFIDAVIT

Juan Sanchez, after being sworn states:

- 1. My name is Juan Sanchez and all of the statements made in this affidavit are based on my personal knowledge.
- 2. I am the President of the Board of Trustees of the Chilili Land Grant and have been President since 1989.
- 3. I am familiar with the land that Patrick Elwell claims within the land grant, described as Tract
- 6, Map 71 of the Chilili Land Grant Plane Table Survey consisting of 31 acres.
- 4. I am familiar with the value of land within the Chilili Land Grant.
- 5. An appraisal of similar land within the land grant, consisting of 20 acres, rendered a value range of \$15,000-\$35,000. See Exhibit 1 hereto.
- 6. The value of the land Elwell claims has a similar value.

SUBSCRIBED AND SWORN TO before me this 4th day of Nov.

Sanchez. Witness my hand and official seal:

Sara L. Coleman

X

ILIAN SANCHEZ

Notary Public

My commission expires:

Sion Expires:

Occupant vacant	ilili Land Grant Assn for t	sei stephen ko	chorne	1131 STEFFE 1191				
Location Built Up Growth Rate Property Values Demand/Supply		Approved the second sec	SDOTTIE	_ Instructions to App	Establish v	alue for current owner	er donating	
Built Up Growth Rate Property Values Demand/Supply	Urban		(1)			Cood Ave	Folia Base	
Growth Rate Property Values Demand/Supply			X Rural	Employment St	a billib	Good Avg	Fair Poor	
Property Values Demand/Supply	Over 7			Convenience to		H	\mathbf{X}	
Demand/Supply	Fully Dev Rapid	Steady	X Slow	Convenience to		H H		
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Land Use ———————————————————————————————————	Industrial 90 % Vacant		do //COMME	Adequacy of Ut		ПП		
Change in Present L		tely Likely	Taking Place	Property Comp	atibility			
		t Agri-Ranch To			Detrimental Conditi	ons 🗍	\square	
Predominant Occupa		Tenant	% Va	Police and Fire	Protection		\overline{X}	
Single Family Price I	Range 45	to 275+ Predor			rance of Properties			
Single Family Age	New yrs. to yrs.	60+ Predominan	t Age28	yrs. Appeal to Mark	et			
Comments including	those factors, favorable or u	infavorable, affecting ma	rketability (e.g. pub	olic parks, schools, view	w, noise) See Attac	hed Addendum		
				N. 15.				
The second second	1318' subject to survey			= +/- 20 Acres			Corner Lot	
Commence of the commence of th	n Agricultural/Residential			Present Improveme		Do Not Conform to Zo	ning Regulations	
Highest and Best Us	se X Present Use	Other (specify)	lighest & best use	e is its intended rest	oration to Chilili L	and Grant as vacant i	nterior land	
Publ	ic Other (Describe)	OFF-SITE IMP		Topo <u>Mountai</u>	nous, forested			
Elec.	NONE		Public Private	Size Typical	for the area			
Gas	NONE	Surface Hard Packet	7	Shape Rectang	ular			
Water	NONE	Maintenance F			ns, forests			
San. Sewer	NONE	Storm Sewer		Drainage Appears		d Map: 350133 006E		
_	Underground Elec & To			_		cial Flood Hazard Area		
Comments (favorab	le or unfavorable including	any apparent adverse e	asements, encroad	chments or other adv	erse conditions) Se	e Attached Addendun	1	
is inferior to or less fa	or more favorable than subject avorable than the subject pro	pperty, a plus (+) adjustn	nent is made, thus i	ncreasing the indicate	d value of the subject	t.	- In the comparable	
ITEM	SUBJECT	COMPARAB	LE NO. 1	COMPARA	COMPARABLE NO. 2		COMPARABLE NO. 3	
Address Tract 36,	, Chilili Land Grant	Lot 17, Block A		Tr E, Section 31	Tr E, Section 31			
		Tajique/Shiraz Ranci	1	Moriarty		Willow Lake Section		
Chilili						McIntosh		
Proximity to subject		7.8 Miles South	20.000	16.1 Miles Northea		McIntosh 13.1 Miles East	16	
Proximity to subject Sales Price	\$ N/A		\$ 30,000		\$ 19,000	McIntosh 13.1 Miles East	\$ 35,000	
Proximity to subject Sales Price Price \$/Sq. Ft.	\$ N/A		\$43.56	16.1 Miles Northea	\$ 19,000 \$36.68	McIntosh 13.1 Miles East	\$ 35,000 \$37.33	
Proximity to subject Sales Price Price \$/Sq. Ft. Data Source	\$ N/A MLS/Buyer Intervw	MLS 665310	\$43.56 DOM 0	16.1 Miles Northea MLS 637749	\$ 19,000 \$36.68 DOM 206	McIntosh 13.1 Miles East MLS 610742	\$ 35,000 \$37.33 DOM 397	
Proximity to subject Sales Price Price \$/Sq. Ft. Data Source Date of Sale and	\$ N/A MLS/Buyer Intervw DESCRIPTION	MLS 665310 DESCRIPTION	\$43.56	16.1 Miles Northea MLS 637749 DESCRIPTION	\$ 19,000 \$36.68	McIntosh 13.1 Miles East MLS 610742 DESCRIPTION	\$ 35,000 \$37.33	
Proximity to subject Sales Price Price \$/Sq. Ft. Data Source Date of Sale and Time Adjustment	\$ N/A MLS/Buyer Intervw DESCRIPTION N/A	MLS 665310 DESCRIPTION 08/27/09	\$43.56 DOM 0	16.1 Miles Northea MLS 637749 DESCRIPTION 06/26/09	\$ 19,000 \$36.68 DOM 206	McIntosh 13.1 Miles East MLS 610742 DESCRIPTION 04/16/09	\$ 35,000 \$37.33 DOM 397	
Proximity to subject Sales Price Price \$/Sq. Ft. Data Source Date of Sale and	\$ N/A MLS/Buyer Intervw DESCRIPTION N/A Chilili Land Grant	MLS 665310 DESCRIPTION 08/27/09 Tajique	\$43.56 DOM 0 +(-) Adjust.	16.1 Miles Northea MLS 637749 DESCRIPTION 06/26/09 Moriarty	\$ 19,000 \$36.68 DOM 206 +(-) Adjust.	McIntosh 13.1 Miles East MLS 610742 DESCRIPTION 04/16/09 McIntosh	\$ 35,000 \$37.33 DOM 397 +(-) Adjust.	
Proximity to subject Sales Price Price \$/Sq. Ft. Data Source Date of Sale and Time Adjustment Location	\$ N/A MLS/Buyer Intervw DESCRIPTION N/A	MLS 665310 DESCRIPTION 08/27/09 Tajique 10 Acres/HighPlains	\$43.56 DOM 0 +(-) Adjust.	MLS 637749 DESCRIPTION 06/26/09 Moriarty 16 Acres/HighPlain	\$ 19,000 \$36.68 DOM 206 +(-) Adjust.	McIntosh 13.1 Miles East MLS 610742 DESCRIPTION 04/16/09 McIntosh 30 Acres/HighPlains	\$ 35,000 \$37.33 DOM 397 +(-) Adjust.	
Proximity to subject Sales Price Price \$/Sq. Ft. Data Source Date of Sale and Time Adjustment Location Site/View	\$ N/A MLS/Buyer Intervw DESCRIPTION N/A Chilili Land Grant 20 Acres/Mtns	MLS 665310 DESCRIPTION 08/27/09 Tajique	\$43.56 DOM 0 +(-) Adjust.	MLS 637749 DESCRIPTION 06/26/09 Moriarty 16 Acres/HighPlain None	\$ 19,000 \$36.68 DOM 206 +(-) Adjust.	McIntosh 13.1 Miles East MLS 610742 DESCRIPTION 04/16/09 McIntosh 30 Acres/HighPlains None	\$ 35,000 \$37.33 DOM 397 +(-) Adjust.	
Proximity to subject Sales Price Price \$/Sq. Ft. Data Source Date of Sale and Time Adjustment Location Site/View Improvements	\$ N/A MLS/Buyer Intervw DESCRIPTION N/A Chilili Land Grant 20 Acres/Mtns None	MLS 665310 DESCRIPTION 08/27/09 Tajique 10 Acres/HighPlains None	\$43.56 DOM 0 +(-) Adjust.	MLS 637749 DESCRIPTION 06/26/09 Moriarty 16 Acres/HighPlain None None	\$ 19,000 \$36.68 DOM 206 +(-) Adjust.	McIntosh 13.1 Miles East MLS 610742 DESCRIPTION 04/16/09 McIntosh 30 Acres/HighPlains None None/Wells in Area	\$ 35,000 \$37.33 DOM 397 +(-) Adjust. -5,000	
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Proximity to subject	14-cv-00032-KG	11.4 Miles North	TOTAL TOTAL	11.5 M orth	Page 6 of 7	16.2 Miles Northea	ist
Sales Price Price \$/Sq. Ft. Data Source Date of Sale and Time Adjustment Location Site/View Improvements	\$ N/A		\$ 36,000		\$ 22,000	Total interpretation	\$ 1
Price \$/Sq. Ft.			\$12.10		\$19.80		\$
Data Source	MLS/Buyer Intervw	MLS 213	DOM 335	MLS 640966	DOM 111	MLS 608291	DOM 2
Date of Sale and	DESCRIPTION	DESCRIPTION	+(-) Adjust.	DESCRIPTION	+(-) Adjust.	DESCRIPTION	+(-) Ad
Time Adjustment	N/A	03/26/09		03/19/09		10/24/08	
Location	Chilili Land Grant	Mtn Valley/Edgewo		Mtn Valley/Edgewd	-10,000	Moriarty	
Site/View	20 Acres/Mtns	10 Acres/HighPlain	s 5,000	10 Acres/HighPlains		16 Acres/HighPlain:	s
Improvements	None	None		None		None	
Water	None	None/WtrHaul Area	1	None		None	
Electr, Gas, Phone	None	None		Has Electr/Phone	-2,500	None	
Road Access	Private/Gated/Dirt	Dirt/Gravel		Private/Dirt		Dirt Road	
Sales or Financing	N/A	None		None		N/A	1
Concessions	N/A	None		None		N/A	
Net Adj. (Total)		+ X-	\$ 5,000	()+ (X)-	\$ 7,500	X+	\$
Indicated Value		Gross: 41.7		Gross: 79.5	4 7,300	Gross: 0.0	Ą
of Subject		Net: -13.9	\$ 31,000	Tarana Estados	\$ 14,500		•
Comments on Market	Data The subject is app		int farm/ranch gra	zing & forest lands si	tusted in the Chil	Net: 0.0	\$ 1
the village of Chilili	, NM, a very small rural m	ountain village ann	roy 30 miles SE of	Albuquerque (papula	tiated in the Chil	III Land Grant approx	x 6 miles ea
Census). The Chili	li Land Grant was petition	ed by Francisco Ara	on and others in	1841 The areat was	duon 113 compris	ed of 3/ households	as of last
acres. The office of	of the Surveyor General co	nfirmed the grant for	you and others in	1841. The grant was	approved by Go	vernor Manuel Armij	o for 88,34
an agricultural coop	f the Surveyor General co	minimed the grant it	1 23,000 acres. L	ocated in Torrance a	nd Bernalillo cour	ities the land grant v	vas convert
	Jeruave III 1945.						
Access is via La lar	a Pd dua aast off Ct Dd 2	27 6 11 11	5.01.1111				
locked gates along	a Rd due east off St Rd 33	or from the village of	or Chillii; La Jara R	d is an unpaved priva	ate road owned b	y the Chilili Land Gra	ant Assn, w
locked gates along	the way; prior permission	of the Chilili Land (Grant Assn is requ	ired to access land w	thin the Land Gra	ant including the sub	ject, due to
locked gates, altilo	ugh winter access is often	impossible due to a	accumulation of m	ountain snows which	make the roads	muddy, deeply rutted	d, snowbou
and impassable.							
and the inaccessabi	nt Assn on long-term leas lity of the roads have mad	es for purposes of b de that too impraction	the American Civil wilding residences cal to pursue.		s. The Chilili Lar e, but so far the o	nd Grant Assn's heirs complete lack of mod	can lease dern utilitie
while there are a co- time if possible for lot owners must ob- are locked gates alo Comparable sales d more challenging ec	nt Assn on long-term leas lity of the roads have mad puple of privately owned le purposes of restoring the tain permission from the o	es for purposes of the that too impraction ots similar to the su Land Grant to its or Grant Assn to access or the small, low sales the subject is a lare	the American Civil pullding residences cal to pursue. bject which are looking in a configuration of their lots since the case volume Chilili mage, 20-acre tract looking the configuration of the case of the cas	War in the mid 1800 if they should choos cated within the Grann; the Grant Assn's Pane roads into the area market even during bricked in a very remonant of the cated in a very remonant of th	t, the Grant Assn resident, Juan Sa a are owned by the	hopes to recover all nchez, reports that ease Grant Assn, and as es, and is especially of the small shall be so as a small shall be small sha	dern utilitie I of those of even the priss noted, the
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EXPERIENCE

MARTINEZ & ASSOCIATES INC (2001-Present):

Senior Vice Pres/Certified Appraiser. Res'l Appraisal firm

Albuquerque, NM

FIRST NATIONAL BANK OF SANTA FE (1996-2001):

Senior Vice Pres & Mgr, Retail Banking Division

Santa Fe, NM

NORWEST MORTGAGE INC (1992 - 1996):

New Mexico Area Manager

Albuquerque, NM

FIRST INTERSTATE BANK (1983 - 1992):

Semor Vice Pres & Mgr, Commercial & Res'l Real Estate Loan Div

Albuquerque, NM

NEW MEXICO FEDERAL SAVINGS BANK (1975 - 1983):

Senior Vice Pres/N M Area Mgr, Real Estate Lending

Albuquerque, NM

EDUCATION

1967 - 1972 University of Oldahoma (Major in Industrial Psychology, Minors Finance: English:

1963 - 196 Arrowhead High School (Hardand, Wisconsin)

-- Top 10% of Class: Elected to Nat'l Honor Society by Instructors

PROFESSIONAL EDUCATION

Course	Sponsor	Location	Dates	Hours
Appraisal Principles	Appraisal institute	Houston, Tx	9/23-9/29/01	36
Appraisal Procedures	Appraisal Institute	Portland, Ore	10/8-10/13/01	36
Standards of Prof Practice	Appraisal Institute	Houston, Tx	11/2-11/03/01	15
Regional Economic Forecast	Appraisal Institute	Albuq, NM	2/08/02	2
Standards of Prof Practice	Appraisal Institute	Albuq, NM	3/27-3/28/03	15
Uniform Res l App Report	Dearborn Institute	Albuq, NM	9/19-9/20/03	15
Appraisal Methods	Norris Schools Inc	Albuq, NM	9/22-9/25/03	30
Appraising Manufactured Hsg		Online	11/26/03	7
FHA Appraisal Process	Appraisal Institute	Online	1/02/04	7
Applied Res'l Prop Valuation	Norris Schools Inc	Albuq, NM	3/25-3/26/04	15
FHA: New Res' Apprs? Form	Appraisal Institute	Albuq, NM	1/27/06	7
Subdivision Valuation	Appraisal Institute	Albuq, NM	4/7/06	7
Fundamentals, Apps'l Review	Columbia Institute	Albuq, NM	2/16/07	7
Uniform Stds of Prof Practise	Appraisal Institute	Albuq, NM	1/24/08	7
Mortgage Fraud	McKissock Education	Albuq, NM	2/26/08	7
Convincing Res l Apps ls	Appraisal Institute	Albuq, NM	5/9/08	3.5
AI-100 Summary Apps 7 Repts	Appraisal Institute	Albuq, NM	5/9/08	3.5
				213

ORGANIZATIONS

past and present

State Certified Real Estate Appraiser NM 02212-R

The Appraisal Institute
Albuquerque Board of Realtors

NM Homebuilders Assn (Board of Directors)

NM Mortgage Bankers Assn (Board of Directors)

ABQ Neighborhood Honsing Assn (Board of Directors)

Namaste Child & Family Development (Board of Directors)